

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-cv-00597-FDW-DCK

THE FAIRPOINT)
COMMUNICATIONS, INC. *ET AL.*)
LITIGATION TRUST,)
Plaintiff,)
vs.)
VERIZON COMMUNICATIONS, INC.,)
NYNEX CORPORATION, VERIZON)
NEW ENGLAND, INC., AND VERIZON)
INFORMATION)
TECHNOLOGIES L.L.C.,)
Defendants.)

O R D E R

THIS MATTER is before the Court on Defendant's Motion To Dismiss (Doc. No. 54). The magistrate judge's memorandum and recommendation ("M&R") (Doc. No. 67) recommended that the motion be denied based on the decision to grant Plaintiff's Motion For Leave To File A Second Amended Complain (Doc. No. 60). The parties were advised that objections were to be filed in writing within fourteen (14) days after service of the magistrate judge's decision. (Doc. No. 37 at 6). The time for filing objections has since passed, and no objections have been filed by either party in this matter. In fact, Defendants have filed a new Motion to Dismiss (Doc. No. 73), thereby acknowledging dismissal of the prior motion. For the reasons stated below, the Court DENIES as MOOT Defendant's Motion to Dismiss (Doc. No. 54).

The Federal Magistrate Act provides that a district court "shall make de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); Camby v. Davis, 718 F.2d 198, 198 (4th Cir. 1983). "By

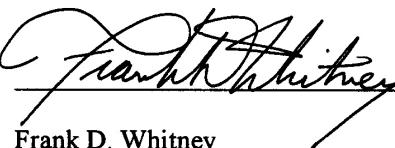
contrast, in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Accordingly, the Court finds that the magistrate judge’s findings of fact are supported by the record and his conclusions of law are inconsistent with and supported by current case law. See Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982) (holding that only a careful review is required in considering a memorandum and recommendation absent specific objections). The Court hereby accepts the M&R and adopts it as the final decision of this Court for all purposes relating to this case.

IT IS, THEREFORE, ORDERED that Defendant’s Motion to Dismiss (Doc. No. 54) is DENIED as moot.

IT IS SO ORDERED.

Signed: July 19, 2012



Frank D. Whitney
United States District Judge

